



NIXON PEABODY LLP  
ATTORNEYS AT LAW

NIXONPEABODY.COM  
@NIXONPEABODYLLP

Anjali Vohra  
Associate  
avohra@nixonpeabody.com

Nixon Peabody LLP  
799 9th Street NW  
Suite 500  
Washington, DC 20001-4501  
202-585-8000

August 31, 2016

**VIA EMAIL AND FIRST CLASS MAIL**

The Hon. Karen V. Gregory  
Secretary of Federal Maritime Commission  
800 North Capitol St.  
Room 1046  
Washington, D.C. 20573

Re: Docket No. 15-11 – Ovchinnikov v. Hitrinov

Dear Ms. Gregory:

Enclosed for filing in the above-captioned matter are an original true copy and five (5) additional copies of:

1. Respondents' Response to Complainants' Improper Motion to Supplement the Record

If you have any questions, please do not hesitate to contact me.

Best regards,

Anjali Vohra

Enclosures

**FEDERAL MARITIME COMMISSION**

**WASHINGTON, D.C.**

**DOCKET NO. 15-11**

**IGOR OVCHINNIKOV, ET AL**

**v.**

**MICHAEL HITRINOV, ET AL**

**Consolidated With**

**DOCKET NO. 1953(I)**

**KAIRAT NURGAZINOV, ET AL**

**v.**

**MICHAEL HITRINOV, ET AL**

**RESPONDENTS' RESPONSE TO COMPLAINANTS'  
IMPROPER MOTION TO SUPPLEMENT THE RECORD**

Pursuant to FMC Rules, 69, and 71, Respondents Empire Lines United and Michael Hitrinov hereby respond to Complainants' August 30, Motion to Supplement the Record. Complainants have entirely failed both to meet one of the prerequisites to relief under the Rules, and to make any showing of reasons in support of their motion.

**A. Complainants Have Failed To Meet A Condition Precedent To Relief**

As explained most recently in Respondents August 29 Response to Complainants' Belated and Improper Motion for Leave to Sur-Reply, the FMC Rules (Rule 71(a)) require that a non-dispositive motion "must" be preceded by a good faith effort to confer with opposing counsel, the results of which "must" be stated in the motion. As per usual, Complainants have made zero effort to comply with either of those conditions precedent. Their motion thus could, and should, be dismissed for that reason alone.

**B. Complainants Have Not Shown Any Basis For Relief.**

The FMC Rules require that any motion state, inter alia, the “purpose” of the relief being requested, the “authority” relied upon, and the “facts claimed to constitute the grounds supporting the relief requested.” Rule 69(e). Complainants’ motion does none of these.

Complainants do not deign even to give a reason why the record requires supplementation. Instead, they timidly suggest that the Presiding Officer may wish to consider the attached document, “to the extent” that it “further reflects upon the veracity and credibility” of Mr. Kapustin.

The veracity and credibility of Mr. Kapustin, however, have no bearing on the question of whether Complainants have met their burden of proving by the preponderance of the evidence that the FMC has subject matter jurisdiction, and thus appears to be yet another effort by Complainants to re-direct attention from their inability to identify even a single document linking them to the transportation contract.

Furthermore, Mr. Kapustin has already addressed the specific matters addressed in the attached “Certification” – certain emails that he sent at various times to various counsel. See Kapustin Aff. par. 44 and App. 16. Mr. Kapustin states both there and in the Certification that emails previously sent by him were transmitted under duress from Mr. Nussbaum.

To the extent that the emails reflect on the veracity and credibility of anyone, it is Complainants’ Counsel. The Mr. Kapustin whom he now tries to paint as a congenital liar is the same Mr. Kapustin for whom Counsel requested third party help just a few months ago, notably stating “Mr. Sergey Kapustin has asked me to bring certain information to the attention of the Court (i.e., the Presiding Officer).” Kapustin Aff. App. 16.

Finally, as previewed in our August 29 Response (n.4), the “Certification” now sponsored by Complainants’ Counsel was obviously planted in the DNJ through joint operation of Mr. Nussbaum and his partner-in-crime Ms. Temkin. Indeed, the Certification reveals on its very face that it was prepared in cooperation with and using documents provided by Mr. Nussbaum.<sup>1</sup> This raises substantial ethical questions about whom Mr. Nussbaum actually represents. [Ms. Tempkin too, but that is not a matter for this proceeding]. Their respective “clients,” are, as the Presiding Officer has explained, directly adverse to one another. Any amount that the plaintiffs may recover against Empire regarding the four cars at issue in both cases will reduce or eliminate any possible recovery by Complainants. We wonder if Mr. Nussbaum has explained this obvious conflict to his so-called clients and received their written consent, as required by the ethical rules applicable to Mr. Nussbaum pursuant to FMC Rule 26. Although we are reluctant to believe in conspiracy theories, this latest tactic would appear to support Mr. Kapustin’s claim in the DNJ that Complainants’ Counsel and Plaintiffs’ New Jersey counsel are less interested in representing their clients’ interests than in carrying out a coordinated pincer attack against Empire.

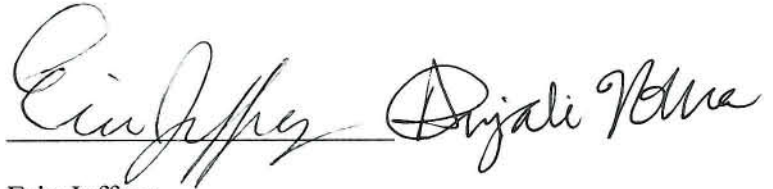
---

<sup>1</sup> We note, moreover, that Ms. Temkin obviously had no legitimate reason to submit the certification, other than as a pretext for use by Mr. Nussbaum in this supposedly separate proceeding. It was filed in purported support of a motion to disqualify that had been filed in February – *more than six months earlier*. And the emails it reports on were dated *no later than two months earlier*.

## CONCLUSION

For the foregoing reasons, the Presiding Officer should deny Complainants' request to supplement the record.

Respectfully submitted,

Handwritten signatures of Eric Jeffrey and Anjali Vohra. The signature of Eric Jeffrey is on the left, and the signature of Anjali Vohra is on the right, both written in cursive.

Eric Jeffrey

Anjali Vohra

**Nixon Peabody LLP**

799 9<sup>th</sup> Street, N.W., Suite 500

Washington, D.C. 20001

(202) 585-8000



**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing Respondents' Response to Complainants' Improper Motion to Supplement the Record by email and first class mail to the following:

Marcus A. Nussbaum, Esq.  
P.O. Box 245599  
Brooklyn, NY 11224  
[Marcus.nussbaum@gmail.com](mailto:Marcus.nussbaum@gmail.com)

Seth M. Katz, Esq.  
P.O. Box 245599  
Brooklyn, NY 11224

Dated at Washington, DC, this 31<sup>th</sup> day of August, 2016.

  
\_\_\_\_\_  
Anjali Voltra  
Counsel for Respondents